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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD PHILLIP MCKENNA,

Defendant and Appellant.

G045625

(Super. Ct. No. 06NF1782)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.  
Michael Hayes, Judge. Affirmed.

Edward Phillip McKenna in pro. per.; and Athena Shudde, under  
appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

We appointed counsel to represent defendant Edward Phillip McKenna on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant Edward Phillip McKenna was given 30 days to file written argument in defendant's own behalf. He asked for several extensions which were granted. After five extensions totaling more than 140 days to file a brief, his next request for an extension was denied.

Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel provides five potential issues which, if they were resolved favorably to defendant, would result in reversal or modification of the judgment. We have examined them and conclude each lacks merit. We affirm.

## I

### FACTS

The information against defendant was filed on May 14, 2007. It alleges that on April 27, 1999 he raped a woman, committed second degree robbery, second degree commercial burglary and unlawfully took a vehicle. It further alleges defendant used a deadly weapon when he committed the crimes alleged, the victim was over 65 years old and that defendant suffered two or more prior serious convictions.

#### *Self-Representation*

Prior to trial, defendant informed the court he wanted to defend himself. The following questions and answers took place between the court and defendant:

“[Q:] Wow, you really want to do this, Mr. McKenna? We'll talk about it but I'm just looking at the charges against you. You really, really want to risk yourself going to prison for about life? I mean seriously life? Do you think you can do a better job than an attorney can?”

“[A:] Yes.

“[Q:] Let’s go over the form. You realize and I have a form entitled pro rata waiver form here that has your signature on it and some initials and you realize it’s just not smart to represent yourself as I’ve told other people. [¶] Even attorneys who get arrested for crimes hire attorneys to represent themselves; they don’t even try to represent themselves. [¶] And you understand that it’s not smart to try and represent yourself?

“[A:] Well, I know.

“[Q:] Okay. And that because you are not experienced you might ask the wrong questions, you might call some witnesses, and what they have to say or any mistakes you make could help the prosecutor in actually convicting you of these very serious charges alleged against you. You realize that?

“[A:] Yes.

“[Q:] Okay. You also need to remember that you’re not entitled to any special privileges or you’re not going to get [special] treatment from the judge. That judge is going to look over to you and that judge in their eyes is going to see a lawyer sitting at the table. [¶] And if the lawyer doesn’t know how to object properly, doesn’t know how to ask questions properly, the judge could tell, basically you because you’re the lawyer in the case, Mr. Lawyer, Mr. Defendant, you don’t know how to ask proper questions so the objections of the prosecutor are sustained. [¶] And the tidal wave can come and just sweep you away because you’re not even going to be allowed to speak up for yourself because you don’t know all the procedure, the proper language and those sorts of things. Do you understand that?

“[A:] Yes.”

The judge continued admonishing and questioning defendant for some time, consuming a dozen more pages in the reporter’s transcript, frequently asking defendant “Do you understand that?” defendant always said he did understand. On December 11, 2008, the court granted defendant’s request to represent himself. Toward

the end of the session, the court inquired whether defendant had any questions. He did not. The court then asked: “You understand and agree to that?” Defendant responded: “Yes.”

On May 20, 2010, defendant completed and signed a “FARETTA WAIVER.” The last question and answer on the two-page form states: “Do you now wish the court to permit you to represent yourself as your own attorney?” “Yes” is checked.

On February 28, 2011, the court reiterated much of the information it previously provided defendant about self-representation. Specifically, the court informed defendant: “1) It is almost always unwise to represent yourself, and in doing so you may conduct a defense which may aid the prosecutor in convicting you of the charges; [¶] 2) You are not entitled to any special privileges or treatment from the judge. The judge will require you to follow all the technical rules of law, procedure and evidence in the defense of your case and in the presentation of your defense. The judge will not aid you in your efforts to defend yourself; [¶] 3) The prosecutor will be an experienced, professional attorney who will not treat you leniently or in any special way even though you do not have the same skills or experience the prosecutor has. It will not likely be a fair contest since the prosecutor will have an advantage by reason of his skill and experience; [¶] 4) If you are in custody, you will receive no more library privileges than those available to other persons representing themselves. You will receive no extra time for preparation. You will have no staff or investigators at your beck and call; [¶] 5) If you elect to represent yourself, you will not be successful in any appeal based upon the quality of your representation. In other words, an allegation that you were denied ‘effective assistance of counsel,’ that is, you were ‘incompetent’ as a trial attorney, will not result in a new trial with competent counsel.”

### *Not Guilty by Reason of Insanity Plea*

Some time later, defendant changed his plea to not guilty by reason of insanity. Citing Penal Code sections 1026 and 1027, the court appointed two doctors to examine defendant.

A November 12, 2010 minute order states: “The Court notes that the defendant refused to see the doctors that were appointed due to his entry of ‘Not Guilty By Reason of Insanity’ plea. . . . The defendant is advised that failure to see the doctors that have been appointed could greatly diminish his case.”

A January 6, 2011 minute order states: “The court reappoints the two doctors originally appointed on Sept. 27, 2010 . . . . The defendant is ordered to cooperate with the appointed doctors and see them when the doctors want to see the defendant.” An April 8, 2011 minute order indicates that, once again, “the defendant refused to speak with the appointed doctors.”

### *Trial Continuance*

On January 6, 2011, the court was prepared to select a jury for defendant’s trial. But defendant had a list of issues to go over with the court. The court ended up spending the entire day going over defendant’s issues with him, sometimes with the prosecutor excused from the courtroom, but most of the time with the prosecutor present.

Various matters arose during the day. The court reviewed the progress of defendant’s case. The file was full of activity. It appears from the record defendant was knowledgeable about the court system. The names of at least seven different judges were mentioned. Defendant had filed motions to disqualify three of them. He sent a complaint to the Commission on Judicial Performance. He exercised his rights to use subpoenas. When the court and defendant discussed a petition defendant made to the California Supreme Court, defendant stated to the court: “Well, Ron George told me to submit the proof of corruption and he would hear the habeas corpus.”

At one point, the court read from the record that the prosecutor had noted “defendant is already serving a life sentence on another matter and is wondering if his issues with the court and the sentence . . . perhaps do not have any effect on the facts of this case.” The court admonished defendant he was “not to reinvestigate other cases in other counties.” Defendant’s investigator was in court, and the court told him: “In other words, if it’s part of his mental health records, some of those mental health records happen to be in another file, you can go look at that file for that. But you’re not reinvestigating witnesses, you’re not going back to decide whether or not it was appropriate for him to plead or do other — take other actions in the other case.”

The court set a date for defendant to return to court and indicate whether there were any problems with his investigation. Instead of taking the court up on its offer, defendant filed motions to disqualify the judge, the investigator, and the district attorney for corruption.

### *Guilt Phase of Trial*

Trial commenced on July 5, 2011. The first morning was spent on various defense motions. Some of the afternoon was consumed with discussions about a stipulation defendant denied signing: “It is hereby stipulated by and between the people of the State of California” and the defendant “Edward Phillip McKenna, that the videotaped testimony, transcript, and exhibits of complaining witness Jane Doe’s testimony at the preliminary hearing/conditional exam, taken on May 11, 2007, shall be presented to the jury in lieu of live testimony of Jane Doe during the People’s case in the jury trial of the above-captioned case.” The court ended up reading from a previous court session when the stipulation was reached and entered. The court read aloud the portion of the prior testimony where defendant entered into that stipulation. After the court read the previous testimony, defendant stated: “I need to object and state I never signed nothing.”

The first witness was the prosecution's investigator who was present when the victim testified during the preliminary hearing. The following questions and answers occurred between the prosecutor and the investigator:

"Q: During the course of Jane Doe's testimony, at some point in time did she identify the person who had raped her back in 1999?"

"A: Yes.

"Q: And do you see the person in the courtroom here today that Jane Doe identified as that person during her testimony?"

"A: Yes.

"Q: And could you please identify who that is.

"A: That's the defendant, Mr. McKenna, in the orange jumpsuit."

Next a video of the victim's testimony was played, and a copy of the transcript was handed out to the jurors. The transcript states the court ordered the testimony was taken for purposes of both the preliminary hearing and as a conditional examination.

The victim stated that on April 27, 1999 she was working alone in a dress shop in La Habra. There was \$100 in the cash register. A man came in and asked what time an adjoining store opened. The man left and returned five or 10 minutes later. He again talked about the other store. He left again and returned a third time about five minutes later, but that time he was holding a knife. It was about a foot long. He came running toward her and pushed her back into a chair. He taped her wrists together at the back of the chair and taped her ankles together with duct tape. He then went to the register took the money and left the store through the back door.

The man returned. He untaped the victim's hands, but left the tape around her ankles, and pushed her to the floor. The victim was wearing a sweater over a mastectomy bra, underpants and slacks. The man pulled up her sweater and said "you don't even have a breast" and jerked her sweater back down. He pulled down her pants

around her knees, put his penis in her vagina and moved back and forth. When he finished he told her not to move, taped her hands and left the store.

Again he returned, wanting to know where her car was parked and where her keys were. He took \$350 from her purse and her keys. She begged him not to take her car. The victim identified defendant as the man who raped her.

The prosecution next called the 911 dispatcher, the 911 tape was played and the jury was given a copy of the transcript. The first few lines of the transcript's questions by the dispatcher and answers of the victim are:

“[Q:] Police and Fire La Habra.

“[A:] Please help me.

“[Q:] What's the problem Mame?

“[A:] I've just been raped and robbed.

“[Q:] Okay where are you?

“[A:] I'm at Nina's Fashions at 5-8-1 West La Habra Boulevard.

“[Q:] And how old are you?

“[A:] My GOD I'm 73.”

One of the first officers on the scene testified he found an elderly woman on the floor talking on the phone. She had red duct tape around her wrists and ankles.

A police lieutenant with the City of La Habra testified he was involved with the investigation after “a DNA cold hit.” He interviewed the victim on June 20, 2005. At that time “she was distraught.” He showed her a photo lineup with six photos and gave her no hint which one was defendant. The victim identified defendant. When she saw defendant's photo, she became distraught again.

A forensic scientist compared the semen specimen taken from the victim with a specimen taken from defendant. The specimens matched. The scientist said it was a very rare match and that the chances of such a match may be greater than one in a trillion, but their procedure is to “cap it at one in one trillion.”

### *Guilty Verdict*

A jury found defendant guilty of forcible rape, found it to be true the victim was 65 years old or older, that defendant used a deadly weapon in committing the rape, and that defendant engaged in tying and binding the victim in the commission of the rape. The jury also found defendant guilty of second degree robbery.

### *Sanity Phase*

On July 14, 2011, as the jury was about to be brought into the courtroom, defendant said to the judge: “You forced me into this trial with no defense, to be run over by the district attorney for the corrupt acts you did. You did it to cover up for the other judges. You did it on purpose. You also denied me the appellate process to remove you from my case so I couldn’t complain any higher. [¶] I knew I was going to lose. I don’t mind losing, but not when you railroad me and lie and withhold evidence. There was a tape recording that took place with Forgash, the cop that got up there and lied. You didn’t care about due process, your Honor, because if you did, you would have had that here. [¶] Second, the victim at the preliminary hearing that testified on that thing. His sidekick, the district attorney, the other district attorney, before that preliminary hearing, shoved my picture in her face to point me out at the preliminary hearing.”

Defendant continued with a list of complaints, but made no specific request of the court. Finally, the court said: “Sir, we’ve got the jury in the hallway. Do you intend to present any evidence?” Defendant responded: “I’m going to get on the stand and state what happened to me. Whatever the jury and you guys do, I really don’t care no more. Because it doesn’t matter. You’re here to railroad me. I’m going to put my issues on the record and let the higher courts deal with it because I have no choice. That’s it.” Then for a period of time that consumes five pages of the reporter’s transcript, defendant accused the judge of preventing him access to discovery and accused the deputy district attorney of lying. Finally, the court said: “I believe that the safest course of action is to

call the jury to begin the second phase of the trial, and Mr. McKenna will create whatever record he creates. But somewhere I have to have a record to decide what to do.” The defendant said: “It’s a little too late for all that, your Honor.” He added: “Let’s get on with this fake court thing here. Let’s go.”

The prosecutor indicated that if defendant testified he would be impeaching him with his prior convictions. As the prosecutor was inquiring of the court how far he could go, defendant interrupted the prosecutor, saying: “Do whatever you want. I don’t care. You went this far. Do it all the way. Impeach me with everything you got.”

The court stated: “Since I don’t know what his prior convictions are or what their relevancy are to these proceedings, this is an entirely new issue to me.” The prosecutor began an explanation, and, once again, defendant interrupted the prosecutor, saying: “Use it.” He added: “I don’t care. Use it. You went this far. Use everything.” Despite the interruptions, the court persisted in trying to glean what evidence the prosecutor intended to introduce, and when the prosecutor tried again to explain, defendant once again interrupted him. “Admit them,” defendant said. The prosecutor continued: “Evidence of crimes of moral turpitude . . . affecting the credibility of the witness.” Defendant said: “I agree. Use them. Let him. Use them. I’ll address them.”

The court inquired of defendant: “You have no objection, sir?” Defendant answered the court: “No objection. Use them.” The court ruled: “All right. He says all right with him.”

Defendant began his testimony before the jury: “First, the prosecutor wants me to impeach me with stuff that happened back in 1983, attempted murder, robbery. I did it. I was 18 years old. I was a gang member. I was into drugs. I did PCP, all that stuff. I did it. I went to prison for eight years.” Defendant continued describing the details of his prior crimes, and segued into a description of the present crimes, for a period of time that consumes more than eight pages of the reporter’s transcript. During

his long statement, he told the jury he has been under mental health care for a long time, suffers from schizophrenia and depression and that he tried to kill himself.

When it was time for the prosecutor to cross-examine, defendant announced: “I’m not going to answer no questions from you. I don’t care what you say, what you try to do. I ain’t answering nothing from you.” Defendant argued with the prosecutor and the court attempted to speak to him, but defendant kept interrupting the court, too, finally saying: “No more fake stuff, your Honor. If you really wanted the jury to know the truth, you would have kept them in here when you kept sending them out. But you didn’t. You finished it. Let’s get it done. It’s over. Let’s go. That’s it.”

Finally, the court sent the jury out, and stated: “I want to be clear. I put something on the record. Whether Mr. McKenna chooses to listen or not is his choice. But I have done some research, and early on I talked with Mr. McKenna about the fact that I sent two more doctors back over, he wouldn’t see them, and that that could have consequences at the time of trial.”

The jury found defendant was legally sane when he committed the crimes.

### *Sentence*

The court sentenced defendant to an indeterminate sentence of 25 years to life and to a determinate sentence of seven years, for a total term of 32 years to life. It was ordered defendant serve a minimum of 25 years on the life sentence.

## II

### DISCUSSION

#### *Did the Trial Court Err in Granting Defendant’s Request to Self-Represent?*

The general constitutional guidelines are well established. The Sixth Amendment right to the assistance of counsel applies at all critical stages of a criminal proceeding in which the substantial rights of a defendant are at stake. (*Mempa v. Rhay* (1967) 389 U.S. 128, 134.) The right to counsel may be waived by a defendant who

wishes to proceed in propria persona. (*Faretta v. California* (1975) 422 U.S. 806, 807.) The court must conduct a thorough hearing. (*Id.* at p. 835.) By such waiver, a defendant surrenders many of the traditional benefits associated with the right to counsel. (*Ibid.*) In view of these consequences, a knowing and intelligent waiver of the right to counsel is required before a criminal defendant is permitted to proceed in propria persona. (*People v. Crayton* (2002) 28 Cal.4th 346, 362.)

Here the court spent a very long time trying to dissuade defendant from representing himself, warning him of numerous difficulties and pitfalls which might occur as a result. The court inquired about defendant's education and experience. It appears from the record, the trial court was satisfied defendant was fully aware of the risk he took. We have reviewed the entire record, and find defendant was quite skilled in many ways, such as his use of motions and subpoenas, but that, in fact, much of what the court warned defendant might happen ended up actually occurring. It is clear from the record before us that defendant's waiver of counsel was knowing, intelligent, and voluntary.

*Did the Trial Court Err in Failing to Determine Whether Defendant Had the Mental Capacity to Represent Himself Without Counsel?*

“A person cannot be tried or adjudged to punishment while mentally incompetent.” (Pen. Code, § 1367, subd. (a).) “Both the due process clause of the Fourteenth Amendment to the United States Constitution and state law prohibit the state from trying or convicting a criminal defendant while he or she is mentally incompetent. [Citations.]” (*People v. Lewis* (2008) 43 Cal.4th 415, 524.) Due process and state law “require a trial judge to suspend trial proceedings and conduct a competency hearing whenever the court is presented with substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial. [Citations.] The court's duty to conduct a competency hearing

may arise at any time prior to judgment. [Citations.] Evidence of incompetence may emanate from several sources, including the defendant's demeanor, irrational behavior, and prior mental evaluations. [Citations.] But to be entitled to a competency hearing, 'a defendant must exhibit more than . . . a preexisting psychiatric condition . . . .' (*People v. Rogers* (2006) 39 Cal.4th 826, 847.) "Absent substantial evidence of a defendant's incompetence, 'the decision to order such a hearing [is] left to the court's discretion.' [Citation.]" (*People v. Panah* (2005) 35 Cal.4th 395, 432.)

From our review of the record, we are satisfied the court kept itself abreast of defendant's self-representation and mental abilities. Oftentimes throughout the proceedings, the court engaged in conversations with defendant. We find nothing in the record to indicate defendant's situation ever arose to a level where the court did or should have found him to be mentally incompetent.

*Was the Trial Court Required to Advise, and/or Did it Err in Failing to Advise [Defendant] of the Privilege Against Self-Incrimination Before He Testified?*

"[A] trial court is not *required* to advise a self-represented defendant of the privilege against self-incrimination. In any given case, the court remains free to provide such an advisement, so long as its words do not stray from neutrality toward favoring any one option over another. A trial court must proceed carefully in providing an advisement, but it may provide one if it deems it appropriate. [Citation.]" (*People v. Barnum* (2003) 29 Cal.4th 1210, 1226.)

Here the court spent much time warning defendant of the dangers of self-representation and self-incrimination. Defendant assumed the risk of those dangers. The record states defendant was advised of his constitutional rights on January 6, 2011. And the July 12, 2011 minute order, two days prior to the sanity phase, states: "Defendant advised by the Court that he may self-incriminate himself." We find no error.

*Did the Trial Court and/or the Orange County Jail Deny [Defendant] His Federal Rights to Prepare a Defense Based on the Rules and Regulations Governing Pro Se Defendants and Appointment of Investigators?*

A defendant is guaranteed a ““meaningful opportunity to present a complete defense.”” (*Crane v. Kentucky* (1986) 476 U.S. 683, 690; *Chambers v. Mississippi* (1973) 401 U.S. 284, 302.)

The record reflects the following: “Pro per packet given to the defendant” on December 8, 2008; “Court hears defendant’s request that previous pro per orders be adhered to at the jail” on January 9, 2009; “Court now holds in-camera hearing regarding the appointment of an investigator” on January 9, 2009. At that in camera hearing, the court stated: “I hereby do order that a private investigator be appointed I find that it is reasonably necessary to the defense of your case. And I order that the county pay for the retention of Mr. Szeles, who is one of the people available to do this work, I know to be available, up to an amount of \$1,000; his fees are fairly nominal. So that’s a lot of hours.” On that same day, the court also ordered “pro per orders to be complied with by jail staff regarding paper, law library access and all other orders.” In March 2009 the court ordered the public defender “turn over requested discovery, in open court, to investigator Joseph M. Szeles.” In March, the court once again ordered jail staff to provide paper and library access.

In April 2009, defendant moved to disqualify the investigator for unethical conduct, false representation and false investigative services. The next day, the investigator was present in court when the motion was heard and denied. Defendant was given an additional propria persona packet.

An April 17, 2009 minute order states: “Investigator Szeles will visit defendant and bring supplies, defendant agrees to not refuse to see investigator but chooses not to speak on tactical matters. Court informs defendant that is his choice and right.” An April 22, 2009 minute order states: “Investigator Szeles returns copies of motions provided to him for defendant as on 4/20, per investigator, defendant refused to

see him so copies nor supplies could not be delivered.” An October 20, 2009 minute order reads: “Notice of Motion and Motion to Remove Investigator Joseph Szeles for Illegal Conduct received at counter and forwarded to Dept C17.” That motion was heard on November 20, 2009 and continued before it was completed. On December 31, 2009, defendant wrote a letter to the court about Investigator CJ Ford. When the continued motion was heard, the court denied defendant’s request to introduce reports from CJ Ford. On January 6, 2010, the motion was denied.

A May 5, 2010 minute order states: “In open court it is confirmed that an investigator has been appointed to this case.” A few weeks later, the court signed an order for defendant to have a pencil sharpener.

A May 24, 2010 minute order states: “The Defendant states . . . that the Court do something in regards to Investigator Szeles. The defendant has been attempting to have his case investigated.”

A June 3, 2010 minute order reads: “The Court has reviewed the Defendant’s request to supply legal dictionaries and a thesaurus and rules as follows: [¶] The motion is denied. This same motion was denied on 5/25/10.” His August 16, 2010 request for legal books was also denied.

A request for additional investigative funds was denied because “there are no cost estimates of any kind or good cause is shown for proposed expense of \$1,000. Today the court is coincidentally signing an order that Investigator Munoz be reimbursed for \$66.07 for supplies and 215.87 for copying in May and June of 2010. There is no showing that any additional is necessary, as legitimate costs for supplies and copying can be submitted by the Investigator to the court.”

Defendant requested the removal of Investigator Richard Munoz on October 7, 2010 because he was “assigned to destroy my defense.” The court made orders regarding what supplies defendant could keep in his cell on November 12, 2010: “The new procedure is that the defendant may keep six expandable file folders in his cell

and that any documents above and beyond that will be kept separately by the sheriff's and the documents can be rotated, or the defendant can give the additional documents to his investigator." That same day, defendant requested additional funds for "raw materials." The court told him to submit an itemized list. He also asked his investigator be relieved, which the court denied.

On January 5, 2011, defendant told the court he wanted the investigator to personally obtain records throughout the State of California. The court pointed out they could be subpoenaed and declined defendant's request. The next day, the court directed defendant to write a list of the specific documents he wanted, along with his reasons why he needed them. That afternoon, the court went over the list with defendant and his investigator, Munoz. The court reviewed the history of the hearings held, the discovery of documents and the orders signed. The review was conducted with defendant and the prosecutor.

On April 13, 2011, the court ordered the clerk to copy all subpoenaed documents for defendant. Two weeks later, on April 27, the court heard and denied defendant's motion to replace Investigator Ford. The court reconsidered the motion to remove Investigator Munoz the next day. On May 5, 2011, Munoz "advised the Court that he is attempting to give documents to the defendant pursuant to defendant's subpoenas. The defendant refused to take the documents." On June 17, 2011, the court resumed hearing defendant's motion to disqualify his private investigator, and the court denied the motion. That same day, the court ordered certain transcripts to be prepared at defendant's request, and further ordered the County of Orange to pay for the transcripts.

On July 5, 2011, the court inquired of defendant regarding whether or not he wanted to wait for Investigator Munoz to return from vacation before commencing with his trial. The minute order states: "Defendant states that he will not be using Investigator Munoz for his trial."

When defendant chose to represent himself, he undertook many risks, including “custodial limitations on the ability to prepare a defense in jail.” (*People v. Butler* (2009) 47 Cal.4th 814, 828.) We have thoroughly reviewed the record and conclude the court bent over backward to provide defendant with the tools and assistance he requested. We find no error.

*Substantial Evidence to Support the Rape and Robbery Convictions*

“The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.]” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) In other words, the sufficiency of evidence test used on review “does not require a court to ‘ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.’ [Citation.]” (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) The jury’s determination that defendant intended to rape and rob the victim may be found to be unsupported by the evidence “only when the facts afford *no* reasonable ground for an inference that the intent existed. [Citations.]” (*People v. Padilla* (1962) 210 Cal.App.2d 541, 544, italics added.) Because we cannot find “it . . . clearly appear[s] that under no hypothesis whatever is there sufficient evidence to support [the conviction]” we reject defendant’s sufficiency of the evidence challenge. (*People v. Redmond, supra*, 71 Cal.2d at p. 755.)

Here there was eyewitness testimony. There was DNA evidence. There was circumstantial evidence. All of the evidence supports the jury’s guilty verdict.

III  
DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.